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**NOTE**

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Delegations will find in the Annex, for information, the statements made on behalf of the European Union and its Member States at the above mentioned Diplomatic Conference.

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## **Opening Statement**

Mr President,

On behalf of the European Union and its Member States, allow me first to congratulate you and the other officers on your election. We are confident that you will provide us with the best possible guidance in order to reach a successful outcome at this Diplomatic Conference. Let me also thank the Chinese authorities and in particular the National Copyright Administration of China for hosting this Diplomatic Conference and also the World Intellectual Property Organisation for the excellent preparation and organisation of our meeting.

The reconvening of the Diplomatic Conference on the Protection of Audiovisual Performances, which started back in 2000, is proof of the strong will of all the WIPO members to reach a common goal, which is to ensure an adequate level of protection of intellectual property rights for audiovisual performers. The European Union and its Member States have always attached a great importance to the effective protection of audiovisual performances. This effective protection requires, especially in the digital environment, clear international rules.

The involvement, active participation in the debate and cooperative spirit among WIPO members is beyond doubt. Many of them have put all their best efforts in to trying to resolve the outstanding issues from the Diplomatic Conference in 2000, notably through informal negotiations, regional seminars and open-ended consultations, organised along with the WIPO Secretariat. Our meeting here in Beijing is the evidence of their success, for which they all deserve to be commended.

We have all come to Beijing with an agreed text of the Basic Proposal for the substantive provisions of the Treaty. This has been made possible by building upon the large consensus already achieved at the occasion of the 2000 Diplomatic Conference and thanks to the hard work of the Standing Committee for Copyright and Related Rights at its 22nd session held in Geneva in June 2011. The negotiations resulted in a final agreement on the transfer of rights, the only issue left open after the 2000 Diplomatic Conference. This now provides for a balanced solution which should allow the different WIPO members to provide for the long awaited protection of audiovisual performers.

This Diplomatic Conference is therefore our best opportunity to validate this much awaited agreement and to recognise and reward the work of audiovisual performers. Such recognition is indispensable. Indeed, audiovisual performers have waited already since 1996 to see their rights recognised, in the same manner that the rights of authors and the rights of performers in phonograms have been. This is what we are about to do, here in Beijing.

The European Union and its Member States, along with a number of other delegations, have also worked closely together in order to submit for negotiation, and hopefully for adoption, a number of agreed statements to address specific concerns raised by WIPO members, as was recommended at the last WIPO General Assembly held in Geneva in September 2011. During this Diplomatic Conference we will work on agreed statements that are intended to recall the importance of the Agreement on Trade Related Aspects of Intellectual Property Rights, to clarify the relationship between the WIPO Performances and Phonograms Treaty and the new Treaty, to describe better those performers protected under the Treaty, to also be clear as to the relation between the legal protection of technological measures and limitations and exceptions. The delegations have also worked on a proposal for an additional preambular clause recalling the importance of the Development Agenda.

It needs to be further highlighted that the WIPO members who have worked on and decided to submit together the above mentioned agreed statements and preambular clause come from different regional groups. The European Union and its Member States can assure, and the other sponsors can confirm our statement, that these texts represent a broad and balanced consensus among countries having a particular interest in the international protection of audiovisual performances. Such a wide consensus has not been so often recorded in the past years and this is why we can only invite other delegations to consider joining it, as we all share the same objective at this Diplomatic Conference.

Mr. President,

The text we will be considering has come a long way. This time has been long especially for those who are going to benefit from it and who have legitimate expectations as regards the outcome of our discussions. Perhaps this time was necessary to allow some ideas to reach a certain level of maturity. Today, however, the finalisation and adoption of the Treaty on the Protection of Audiovisual Performances is within reach. We cannot afford to miss this opportunity again.

Mr. President, the European Union and its Member States offer you and all the delegations gathered here at the Diplomatic Conference in Beijing our willingness and constructive spirit to achieve this objective.

Thank you.

### **Declaration pursuant to Article 23(2) and (3)**

Pursuant to Article 23(2) and (3) of the Basic Proposal for administrative provisions and final clauses of the treaty to be considered by the Diplomatic Conference, the European Union hereby declares that it is competent in respect of, and has its own legislation<sup>1</sup> binding on all its Member States on, matters covered by the future Treaty and that it may therefore, in accordance with its internal procedures, become party to this Treaty.

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<sup>1</sup> Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable transmission (OJ L 248, 6.10.1993, p. 15); Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10-19); Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version) (OJ L 376, 27.12.2006, p. 28-35); Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version) (OJ L 372, 24.12.2006, p. 12-18), as amended by Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 (OJ L 265, 11.10.2011, p. 1-5).

## **Floor statement on Article 2**

“The European Union and its Member States welcome the agreed statement on Article 2, which clarifies that the definition of “performer” also covers those whose performances are improvisations, whether they remain unfixed or are fixed.”

## **Floor statement on Article 12**

“The EU and its Member States would like to clarify our understanding with regards to article 12. The EU and its Member States understand that Article 12 leaves full discretion to contracting parties to regulate the relationship regarding the transfer of rights between performers whose performances are fixed in audiovisual fixations and audiovisual producers under their national laws, or not to regulate this relationship. As such, article 12 contains a non-exhaustive enumeration of options for the regulation of the transfer of rights.”

## **Floor statement made by the European Union and its Member States**

The European Union and its Member States would like to support the floor statement just made by the delegation of the United States as regards the floor statement made by the delegation of Korea on the Agreed Statement on article 15 as it relates to article 13.



## **Closing Statement**

Mr President

On behalf of the European Union and its Member States we would like to join others in congratulating you on the success of the Diplomatic Conference. This success has in no small part been due to your excellent guidance and leadership. We would like to express our sincere gratitude to the People's Republic of China for their generous hospitality and efficient organisation.

Our thanks also go to the Director General Mr Francis Gurry, the senior management team and the Secretariat of WIPO for their hard work in preparing for this Diplomatic Conference and in the tireless effort they have shown throughout this meeting.

We also express our appreciation for the work of the Vice Presidents, Chairs and Vice Chairs of the various Committees and all the delegations for their flexibility, co-operation, good humour and hard work.

We are all aware that it has been a long and difficult journey that has brought us here to Beijing. It has been a journey worth taking. This Treaty represents a major breakthrough for the work of WIPO demonstrating the key role that the organisation plays as the multilateral forum for establishing international norms on intellectual property.

This historic treaty closes a gap in the international protection given to performers that has been left open for far too long. The Beijing Treaty on Audiovisual Performances joins now the body of international Treaties upon which countries around the world rely to recognize and reward the value of creativity, the vital role that it plays in our societies. Artistic endeavor is a resource common to all of our countries, no matter the continent, the language or the level of development.

The treaty recognises the valuable contribution played by actors, singers, dancers, musicians and other performers all over the world. They enrich and improve our society and promote cultural diversity. The protection of rights will ensure that performers are rewarded and incentivised to continue bringing stories to life.

We leave Beijing with a new Treaty that will from now on be referred to by the name of this magnificent city. Looking to the future, the European Union and its Member States will build on the sound foundations established here and will always remember the spirit of compromise, genuine good will and exceptional hospitality and friendship which we have all experienced here.

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